IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 132 OF 2006

With

CIVIL APPLICATION NO. 11517 OF 2006
In SECOND APPEAL NO. 132 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT & ORS. - Appellant(s)
Versus
BABUJI MULAJI MARVADI - Respondent(s)

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Appearance :
MR. DIPEN DESAI, AGP for Appellant(s) : 1 - 4.
MR. H.R. PRAJAPATI for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/10/2006

COMMON ORAL JUDGMENT

1. The appeal is admitted for hearing on the

following substantial questions of law:

(i) *Whether on the facts and in the circumstances of the case, the suit filed by the plaintiff was premature as there was no cause of action in his favour?*

(ii) *Whether on the facts and in the circumstances of the case, could a Civil Court grant an injunction against the licensor that he would not be entitled to revoke the license granted by him in favour of the licensee under a Scheme relating to distribution of the essential commodity?*

With the consent of the parties, the matter is finally heard.

2. The plaintiff was awarded a license for distribution of kerosene among the card-holders attached to his ration shop. Apprehending a foul play on the part of the State Government, the plaintiff filed a civil suit for the following reliefs:

(i) That under the facts and in the circumstances of the case, the defendants have no authority to cancel the plaintiff's license, nor they have any

right or authority to distribute kerosene through anyone else against the interest of the plaintiff; and,

(ii) That the defendants be restrained from detaching the card-holders from the plaintiff's shop and attach them with someone else for distribution of kerosene.

Despite service, the defendants did not file the written statement, but, the Court cast the issues and required the plaintiff to lead evidence. The defendants, however, submitted before the Court that they had not taken any action for cancellation of the license or removal of the cards associated with the plaintiff. The trial Court dismissed the suit, but, as the appeal at the instance of the plaintiff was allowed, the State/defendant is before this Court.

3. Shri Dipen Desai, learned Counsel for the appellants, submits that the suit was premature because there was no cause of action in favour of the plaintiff. According to him, in a case of policy, the State would always be entitled to take an action against the license holders if the terms and conditions of the license are violated or the State proposes to change its policy. He also submits that the State did say before the learned

Civil Judge that they had not taken any action and under the circumstances, therefore, the suit was premature. Even before this Court, it is stated that if any action is to be taken against the plaintiff, it would be taken in accordance with Kerosene Distribution Order or the terms of the license and in accordance with law.

4. Shri H. R. Prajapati, learned Counsel for the respondent, on the other hand, submits that the Mamlatdar, on the directions of the State Government, had made an inquiry and had submitted its report to the State Government and as the report was against the interest of the plaintiff, he had cause of action to come to the Civil Court. He also submits that the prayer made by the plaintiff should be understood in its true perspective and not as a general prayer. He submits that the Appellate Court was absolutely justified in granting the decree in favour of the plaintiff.

5. I have heard the parties at length.

6. The Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 relates to distribution of kerosene. When the State Government promulgates an order under Section-3, read with Section-7, of the Essential Commodities Act, 1955, then, the

order would bind the State Government on one side and all persons affected by the said order on the other side. For certain controlled items, the State Government has monopoly, it can distribute such items through its own agency or it can issue licenses in favour of certain persons for distribution of such essential commodities. When certain licenses are issued in favour of certain persons for distribution of the essential commodity, then, all concerned are governed by the license conditions and the covenants of the scheme. In a given case, if the Government comes to a conclusion that the licensee is committing breach of the license conditions or for legal reasons, it would not be expedient to continue with the license of the licensee, then, it can, after giving due opportunity of hearing to such licensee, always revoke the license. If a notice is issued by the State Government to such a licensee, then, the licensee would be obliged to appear before the authority, submit his case and satisfy the authority that the case on hands is not fit for revocation of the license. In a case where the license is rejected, then, such a licensee would have a right of appeal under the Essential Commodities Act, 1955 and thereafter, he would be entitled to file a revision before the revisional authority, as provided under the provisions of the Essential Commodities Act, 1955. When the law itself provides for a complete scheme

of appeals and revisions, then, simply on an apprehension that the license is likely to be revoked, the Civil Court's jurisdiction cannot be invoked to interfere in the matter.

7. I must hold that in absence of a notice to show cause or any order against the interest of the plaintiff, the suit was premature because there was no cause of action in favour of the plaintiff. Upto the date of the suit, no orders against the interest of the plaintiff were made, therefore also, no declaration could be granted in favour of the plaintiff. If an injunction to the extent, as prayed for, by the plaintiff is granted in favour of the plaintiff, the same would lead to a chaotic condition because the State would be denuded of its powers of taking any action against the plaintiff, which under the law the defendant-State is entitled to take.

8. I must also hold that the learned Appellate Court was unjustified in granting injunction against the State Government restraining them from taking an action against the plaintiff.

9. Both the questions, on which the appeal has been admitted, deserve to be decided in favour of the appellant-State. Those are, accordingly, so decided.

10. The judgement and decree passed by the Appellate Court are set aside and the suit is dismissed. It is, however, made clear in view of assurance given by Shri Desai, that the State would be entitled to take an action against the plaintiff in accordance with law. Let a decree be framed accordingly.

11. In view of the final disposal of the appeal, orders on Civil Application No.11517 of 2006 are not needed. It stands disposed of accordingly.

[R.S.Garg, J.]

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